

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Verizon Long Distance	)	IC No. 02-S76215
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER ON RECONSIDERATION**

**Adopted: January 29, 2007**

**Released: January 29, 2007**

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Verizon<sup>1</sup> asking us to reverse a finding that Verizon Long Distance (Verizon)<sup>2</sup> changed Complainant's telecommunications service provider without obtaining proper authorization and verification in violation of the Commission's rules.<sup>3</sup> On reconsideration, we affirm that Verizon's actions violated the Commission's carrier change rules.<sup>4</sup>

**I. BACKGROUND**

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>5</sup> The rules were designed to take the profit out of slamming.<sup>6</sup> The Commission applied the rules to all wireline carriers,<sup>7</sup> and modified its

<sup>1</sup> See Petition for Reconsideration of Verizon (filed Feb. 28, 2004) (*Petition*) seeking reconsideration of *Verizon Long Distance*, 19 FCC Rcd 11911 (2004) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

<sup>2</sup> Verizon notes that, as used in its *Petition*, "Verizon" or "Verizon Long Distance" refers to Bell Atlantic Communications, Inc, d/b/a Verizon Long Distance. *Petition* at 1 n.2. The caption of both the *Division Order* and our Order today is "Verizon Long Distance" and, for simplicity, we will use "Verizon" to encompass all names.

<sup>3</sup> See *Division Order*, 19 FCC Rcd 11911 (2004).

<sup>4</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>5</sup> See *id.*; see also 47 U.S.C. § 258(a).

<sup>6</sup> See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

<sup>7</sup> See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

existing requirements for the authorization and verification of preferred carrier changes.<sup>8</sup>

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.<sup>9</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>10</sup>

4. The Commission also adopted liability rules for carriers that engage in slamming.<sup>11</sup> If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>12</sup> Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>13</sup>

5. The Commission received a complaint on March 11, 2002, alleging that Complainant's telecommunications service provider had been changed from its authorized carrier to Verizon without Complainant's authorization.<sup>14</sup> Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>15</sup> CGB notified Verizon of the complaint.<sup>16</sup> In response, Verizon stated that authorization was received and confirmed through third party verification (TPV) and that it was providing an audio record of the TPV and a written transcript of the recording.<sup>17</sup> The Division determined that the recording provided was not functional and, thus, that it could not verify whether the transcript Verizon provided conformed to the required audio recording.<sup>18</sup> As a result, the Division found that Verizon failed to produce clear and convincing evidence of an authorized carrier change and, therefore, Verizon's actions resulted in an unauthorized change in

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<sup>8</sup> See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

<sup>9</sup> See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

<sup>10</sup> See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>11</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>12</sup> See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

<sup>13</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>14</sup> Informal Complaint No. IC 02-S76215, filed March 11, 2002.

<sup>15</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>16</sup> See Notice of Informal Complaint No. IC 02-S76215 to Verizon from the Deputy Chief, CGB, dated June 21, 2002.

<sup>17</sup> Verizon's Response to Informal Complaint No. IC 02-S76215, received July 23, 2003. All TPV recordings sent by Verizon were on compact disks in .wav format.

<sup>18</sup> *Division Order* at 19 FCC Rcd 11913, para. 4; see also 47 C.F.R. § 64.1150(d).

Complainant's telecommunications service provider.<sup>19</sup> Verizon seeks reconsideration of the *Division Order*.

## II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny the *Petition*. In its *Petition*, Verizon states that it is enclosing a fully functional and complete audio tape recording of the same TPV and asks that such evidence constitutes a new fact or changed circumstance under Section 1.106(c) of the Commission's rules.<sup>20</sup> It contends the enclosed audio tape shows that Complainant authorized the switch to Verizon and that the complaint should be denied.

7. The Commission's rules state that the alleged unauthorized carrier must provide clear and convincing evidence of a valid authorized carrier change not more than 30 days after notification of the complaint.<sup>21</sup> In order to introduce new facts on reconsideration, a petitioner must show either that: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through ordinary diligence, have been learned prior to such opportunity.<sup>22</sup> New facts may also be introduced on reconsideration if the Commission determines that consideration of such facts is in the public interest.<sup>23</sup>

8. Verizon states that, only after issuance of the *Division Order* in June, 2004, did it learn the audio TPV had become non-functional.<sup>24</sup> Verizon claims that its employees who prepared the July 23, 2002, response listened to the audio tape before submission and determined it functioned properly; that the transcript of the verification (attached with the *Petition*) was prepared in-house; and that a Verizon employee listened to the tape to make the transcription.<sup>25</sup> Verizon contends that discovering the tape was non-functional after submitting it is an event which occurred or a circumstance which changed since its last opportunity to present such matters.<sup>26</sup> Verizon also claims that, when it filed its July, 2002 response, it could not have discovered through exercise of any degree of diligence that the audio tape would become non-functional at some point after submitting it to the Commission.<sup>27</sup> We are not persuaded by Verizon's arguments. Verizon states that, in April 2004, it filed via U.S. mail a second copy of the audio tape recording of Complainant's TPV and that prior to this submission, a Verizon

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<sup>19</sup> See 47 C.F.R. § 64.1150(d).

<sup>20</sup> 47 C.F.R. §1.106(c). The *Petition* names the Commission staff individual to whom the TPV was hand-delivered.

<sup>21</sup> See 47 C.F.R. § 64.1150(d).

<sup>22</sup> See 47 C.F.R. §1.106(c).

<sup>23</sup> See *id.*

<sup>24</sup> See *Petition* at 2. Verizon filed its original response in July, 2002.

<sup>25</sup> See *id.* at 3.

<sup>26</sup> See *id.*

<sup>27</sup> See *Petition* at 3. Verizon asks that, if Commission staff determine the audio tape submitted with the *Petition* also is inoperable, they contact Verizon before ruling on the *Petition* in order to discuss how best to submit this evidence. *Id.* at n.3.

employee confirmed that the second audio tape functioned properly.<sup>28</sup> Verizon, however, also states that in an e-mail dated June 3, 2004 – several weeks before release of the *Division Order* -- Commission staff informed Verizon that this second audio tape was not functional.<sup>29</sup> Verizon's *Petition* is silent as to what, if any, actions Verizon undertook once it knew that the TPV submitted in April, 2004, was non-functional. Thus, Verizon has not met either of the first two prongs for admission of new facts on reconsideration.

9. Finally, Verizon argues that it is in the public interest to decide slamming complaints on the basis of a complete record. It contends all parties should have a reasonable opportunity to present complete evidence highly relevant to the Bureau's investigation of slamming allegations and, in this case, an audio tape recording of the TPV confirms that Complainant authorized the switch to Verizon.<sup>30</sup> In addition, Verizon contends *Z-Tel*<sup>31</sup> is precedent to grant the *Petition*.<sup>32</sup> We reject Verizon's public interest arguments. As indicated above, Verizon was given two opportunities to present evidence. By contrast, in *Z-Tel*, we determined after further review of *Z-Tel*'s *functional* verification recording, which *Z-Tel* submitted with its original response, that the carrier change was valid.<sup>33</sup> Here, we find there was a *non-functional* audio tape submitted with Verizon's original response, as well as a second non-functional TPV submitted before issuance of the *Division Order*, thus rendering it impossible to determine whether the carrier change was authorized and, thus, whether it was valid. To allow new facts to be submitted on reconsideration without good cause would hamper the public's interest in the quick resolution of complaints. While we realize that there may be some circumstances under which it is appropriate for a carrier to be given more than 30 days to respond fully to a slamming complaint (and we would consider all such requests), we do not believe it is appropriate to allow the submission of new facts when a carrier has been given ample time to respond in the first instance, and without any showing of good cause, after an order has been issued against the carrier.<sup>34</sup> Accordingly, we deny Verizon's *Petition*.

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<sup>28</sup> See *Petition* at 3, n.8.

<sup>29</sup> See *id.*

<sup>30</sup> Verizon argues that the audio tape recording of the verification became non-functional at some point after filing at the Commission – an event neither the Bureau nor Verizon could have foreseen -- and, moreover, it is not in the public interest to deny Verizon the chance to present its side of the matter. *Petition* at 3-4.

<sup>31</sup> 18 FCC Rcd 15343 (2003).

<sup>32</sup> In *Z-Tel*, the Bureau, on its own motion, reversed a prior grant of a slamming complaint on further review of *Z-Tel*'s verification recording. Verizon claims its case is more compelling than *Z-Tel*, in which the Bureau reviewed originally submitted evidence a second time and found the carrier change valid. Verizon contends it does not seek further review of evidence already submitted, but, rather, requests the chance to present evidence of the TPV for the first time. See *Petition* at 4.

<sup>33</sup> The Division initially granted the slamming complaint against *Z-Tel* because it determined the TPV supplied by *Z-Tel* indicated the verifier did not obtain separate authorization for each service sold, in violation of 47 C.F.R. § 64.1120(3)(iii). See *Z-Tel*, 18 FCC Rcd 12259 (2003). On reconsideration, the Bureau found the carrier change to *Z-Tel* valid (citing *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16016 (2000)). See *Z-Tel* at 18 FCC Rcd 15344-45 para. 4.

<sup>34</sup> See AT&T Corporation, DA 06-2066, released October 19 at para. 7, Comcast Phone, LLC, DA 06-2067, released October 19, 2006 at para. 7; Globalcom, Inc., DA 06-2069, released October 19, 2006 at para. 7; MCI, Inc. DA 06-2070, released October 19, 2006 at para. 7.

**III. ORDERING CLAUSES**

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Petition for Reconsideration filed by Verizon on February 28, 2004, IS DENIED.

11. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief  
Consumer & Governmental Affairs Bureau